

## Message Text

PAGE 01 STATE 052475  
ORIGIN EB-08

INFO OCT-01 EUR-12 ISO-00 FEA-01 L-03 AID-05 CEA-01  
CIAE-00 COME-00 EA-07 FRB-03 INR-07 IO-13 NEA-10  
NSAE-00 USIA-06 OPIC-03 SP-02 TRSE-00 LAB-04 SIL-01  
AGRE-00 OMB-01 ERDA-05 DODE-00 FPC-01 H-01 INT-05  
NSC-05 PM-04 OES-06 SS-15 STR-04 ACDA-07 /141 R

DRAFTED BY EB/ORF/FSE:RMARTIN:MEP/FEA:JMORRIS  
APPROVED BY EB/ORF/FSE - RICHARD MARTIN  
FEA - RGOODWIN  
L/EB - GROSEN

-----101019Z 095631 /11

R 092201Z MAR 77  
FM SECSTATE WASHDC  
TO USMISSION OECD PARIS

LIMITED OFFICIAL USE STATE 052475

E.O. 11652: N/A

TAGS: ENRG

SUBJECT: IEA: US RESPONSE TO QUESTIONS OF THE CHAIRMAN  
OF THE SEQ RE EXTRAORDINARY COSTS.

REF: IEA/SEQ/M(76)3

1. THE CHAIRMAN OF THE SEQ HAS ASKED DELEGATIONS TO RESPOND TO FOUR QUESTIONS POSED IN IEA/SEQ/M(76)3 CONCERNING EXTRAORDINARY COSTS WHICH MIGHT BE INCURRED BY IAB COMPANIES AS THE RESULT OF THEIR PARTICIPATION IN IEA ACTIVITIES. THE US RESPONSE WHICH FOLLOWS IS KEYED TO THE CHAIRMAN'S QUESTIONS AND SHOULD BE FORWARDED TO THE IEA SECRETARIAT (KEMPERMANN).

LIMITED OFFICIAL USE  
LIMITED OFFICIAL USE

PAGE 02 STATE 052475

2. "HOW CAN THE RISK OF CONFLICT OF COMMITMENTS OF OIL COMPANIES BE REDUCED OR ELIMINATED?"

FROM THE STATEMENT OF THIS POINT, AND THE SPECIFIC EXAMPLES OF SITUATIONS IN WHICH EXTRAORDINARY COSTS MIGHT BE INCURRED BY A REPORTING COMPANY AS CONTAINED IN THE IAB PAPER DATED SEPTEMBER 22, 1976, THE U.S. DELEGATION INFERS THAT "CONFLICT OF COMMITMENTS" MEANS SITUATIONS IN WHICH A REPORTING COMPANY CANNOT FULFILL CONTRACTUAL OBLIGATIONS ENTERED INTO BEFORE AN EMERGENCY AS A RESULT OF ITS

PARTICIPATION IN THE IEP EMERGENCY ALLOCATION SYSTEM.  
THE FOLLOWING COMMENTS ARE BASED ON THAT INFERENCE.

THE U.S. DELEGATION BELIEVES THAT, AS A BASIC STEP  
TOWARD REDUCING OR ELIMINATING THE RISK OF CONFLICT OF  
COMMITMENTS, ALL PARTICIPATING COUNTRIES SHOULD MAKE  
A POLITICAL COMMITMENT TO CREATE, IF THEY HAVE NOT ALREADY  
DONE SO, THE NECESSARY DOMESTIC LEGISLATION AND REGULATIONS  
WHICH WOULD (1) RECOGNIZE THEIR COMMITMENTS UNDER THE  
INTERNATIONAL ENERGY PROGRAM (IEP), (SEE FOOTNOTE BELOW)  
AND (2) FACILITATE AVAILABILITY OF LEGAL DEFENSES AGAINST  
BREACH OF CONTRACT CLAIMS ARISING FROM ACTIONS TO IM-  
PLEMENT THE INTERNATIONAL ALLOCATION.

THE U.S. DELEGATION NOTES THAT THE REPORTING COM-  
PANIES MAY BE ABLE TO INCLUDE IN THEIR FUTURE SUPPLY  
CONTRACTS FORCE MAJEURE OR SIMILAR CLAUSES WHICH  
SPECIFICALLY LIMIT THEIR LIABILITY IN SITUATIONS WHERE  
NON-PERFORMANCE OR PARTIAL PERFORMANCE RESULTS FROM IEP  
EMERGENCY ALLOCATION TRANSACTIONS.

IN THE EVENT IT APPEARS AS THOUGH CLAIMS OF EXTRA-  
ORDINARY COSTS MIGHT RESULT FROM SUCH TRANSACTIONS, AN  
"EARLY WARNING SYSTEM" SHOULD BE ESTABLISHED WHEREBY COM-  
PANIES WOULD NOTIFY THE IEA AS WELL AS APPROPRIATE  
LIMITED OFFICIAL USE  
LIMITED OFFICIAL USE

PAGE 03 STATE 052475

NATIONAL GOVERNMENTS AT THE EARLIEST POSSIBLE MOMENT THAT  
THE RISK OF THE CLAIM HAD RISEN. THIS WOULD PERMIT REVIEW  
OF THE PROPOSED TRANSACTION AND MODIFICATION, IF APPRO-  
PRIATE, AS WELL AS CONSULTATION WITHIN THE IEA AND BETWEEN  
GOVERNMENTS TO MINIMIZE THE RISK OF EXTRAORDINARY COSTS.  
CONSIDERATION SHOULD BE GIVEN TO INCLUDING THIS CONCEPT IN  
THE EMERGENCY MANAGEMENT MANUAL.  
(FOOTNOTE)

IN THIS REGARD, THE U.S. DELEGATION CALLS THE SEQ'S  
ATTENTION TO SECTION 251 OF THE ENERGY POLICY AND CON-  
SERVATION ACT OF 1975 (PL 94-163). THIS SECTION PROVIDES  
THAT "(THE PRESIDENT MAY, BY RULE, REQUIRE THAT PERSONS  
ENGAGED IN PRODUCING, REFINING, DISTRIBUTING, OR STORING  
PETROLEUM PRODUCTS, TAKE SUCH ACTIONS AS HE DETERMINES TO  
BE NECESSARY FOR IMPLEMENTATION OF ACTIONS AS HE DETERMINES  
TO BE NECESSARY FOR IMPLEMENTATION OF THE INTERNATIONAL  
ENERGY PROGRAM INsofar AS SUCH OBLIGATIONS RELATE TO THE  
INTERNATIONAL ALLOCATION OF PETROLEUM PRODUCTS."

THE U.S. DELEGATION BELIEVES THAT THESE STEPS --  
A POLITICAL COMMITMENT BY IEP PARTICIPATING COUNTRIES  
TO CREATE THE NECESSARY LEGISLATION AND REGULATIONS,  
FORCE MAJEURE CLAUSES, AN "EARLY WARNING" SYSTEM AND

GOVERNMENT-TO-GOVERNMENT CONSULTATIONS -- SHOULD HELP MINIMIZE THE RISK OF CONFLICTS OF COMMITMENTS BETWEEN ENTITIES WITHIN THE JURISDICTION OF THESE COUNTRIES.

3. "HOW CAN CONFLICTS BETWEEN VARIOUS PARTICIPATING COUNTRIES' LEGISLATION BE REDUCED OR ELIMINATED?"

THE RESPONSE TO THIS POINT IS CONTAINED IN THE RESPONSE TO THE FIRST POINT, NAMELY THAT "... ALL PARTICIPATING COUNTRIES SHOULD MAKE A POLITICAL COMMITMENT TO CREATE, IF THEY HAVE NOT ALREADY DONE SO, THE NECESSARY DOMESTIC LEGISLATION AND REGULATIONS WHICH WOULD (1) LIMITED OFFICIAL USE  
LIMITED OFFICIAL USE

PAGE 04 STATE 052475

RECOGNIZE THEIR COMMITMENTS UNDER THE INTERNATIONAL ENERGY PROGRAM (IEP, AND (2) FACILITATE AVAILABILITY OF LEGAL DEFENSES AGAINST BREACH OF CONTRACT CLAIMS ARISING FROM ACTIONS TO IMPLEMENT THE INTERNATIONAL ALLOCATION."

AS A FIRST STEP IN THE PROCESS OF REDUCING CONFLICTS BETWEEN NATIONAL LEGISLATION, THE U.S. DELEGATION RECOMMENDS THAT EACH DELEGATION PROVIDE THE SECRETARIAT WITH COPIES OF SUCH LEGISLATION AND REGULATIONS AS MIGHT NOW EXIST, OR INFORMATION ON PLANS REGARDING THE CREATION OF SUCH LEGISLATION AND REGULATIONS.

4. "WHAT ARE THE EXISTING LEGAL POSSIBILITIES OF RECOURSE BY COMPANIES TO HOME GOVERNMENTS IN CASES OF EXPROPRIATION OF FOREIGN ASSETS?"

WITH RESPECT TO THE PRESENT LEGAL PROCEDURES APPLIED BY PARTICIPATING COUNTRIES FOR THE PURPOSE OF COMPENSATING COMPANIES WHICH INCUR DAMAGES AS THE RESULT OF GOVERNMENT DIRECTIVES, THE UNITED STATES HAS NO GENERAL SUBSTANTIVE LEGISLATION PROVIDING COMPENSATION FOR COSTS INCURRED IN CONNECTION WITH ACTIONS WHICH THE GOVERNMENT EITHER COMPELS OR ENCOURAGES. HOWEVER, THE FIFTH AMENDMENT TO THE CONSTITUTION, WHICH PROVIDES THAT PRIVATE PROPERTY SHALL NOT BE "TAKEN FOR PUBLIC USE, WITHOUT JUST COMPENSATION," MAY IN SOME INSTANCES REQUIRE THAT COMPENSATION BE MADE.

WHILE THE LAW DEALING WITH "TAKINGS" IS EXTREMELY COMPLEX, IT CAN NEVERTHELESS BE STATED WITH CONSIDERABLE CERTAINTY THAT THE TYPE OF COSTS CONTEMPLATED BY ROOM DOCUMENT NO. 8 OF SEPTEMBER 28, 1976, WOULD NOT BE COMPENSABLE ON THIS BASIS IN THE UNITED STATES. UNDER THE LAW, THE GOVERNMENT MAY EXERCISE ITS AUTHORITY TO REGULATE EVEN WITH SUBSTANTIAL FINANCIAL HARM TO THOSE AFFECTED, WITHOUT GIVING RISE TO A TAKING. A TAKING ARISES ONLY

LIMITED OFFICIAL USE  
LIMITED OFFICIAL USE

PAGE 05 STATE 052475

WHERE A PERSON THROUGH THE DIRECT ACTION OF THE UNITED STATES, IS DEPRIVED OF HIS COMPLETE PROPERTY INTEREST. WHERE THE PROFITABILITY OF HIS ENTERPRISE IS MERELY DIMINISHED, OR WHERE HE IS UNABLE TO TAKE ADVANTAGE OF BUSINESS OPPORTUNITIES, NO TAKING OCCURS.

HOWEVER, THERE ARE IN FACT PRECEDENTS FOR LEGISLATION COMPENSATING COMPANIES FINANCIALLY (OR PROVIDING OTHER RELIEF) FOR LOSSES INCURRED AS THE RESULT OF GOVERNMENT POLICIES. EXAMPLES OF SUCH LAWS INCLUDE:

1. ADJUSTMENT ASSISTANCE - WHERE A REDUCED TARIFF IS DEEMED TO BE IN THE U.S. INTEREST GENERALLY, BUT WORKS HARM TO COMPANIES OR GROUPS OR WORKERS DUE TO INCREASED IMPORTS, THE GOVERNMENT OFFERS ECONOMIC, TECHNICAL, AND TAX ASSISTANCE TO PERMIT THEM TO ADJUST TO THE NEW TARIFF. THESE INCLUDE LOANS FOR THE PURPOSE OF EXPANSION AND MODERNIZATION OF FACILITIES, AND PROGRAMS FOR RETRAINING AND RELOCATION OF WORKERS. SEE 19 U.S.C. 1901 ET SEQ.

2. OPIC - THE OVERSEAS PRIVATE INVESTMENT CORPORATION (OPIC) ENCOURAGES INVESTMENT ABROAD BY PROVIDING INSURANCE TO COMPANIES WHOSE ASSETS MIGHT, BECAUSE OF POLITICAL INSTABILITY IN THE HOST COUNTRY, BE FROZEN OR CONFISCATED WITHOUT COMPENSATION. OPIC HAS ONLY RECENTLY, HOWEVER, EXTENDED ITS INSURANCE TO POLITICAL RISK ASSOCIATED WITH OIL COMPANY ACTIVITIES OVERSEAS, AND HAS INDICATED A WILLINGNESS TO CONSIDER FUTURE APPLICATIONS ON A CASE-BY-CASE BASIS.

3. PROTECTION AGAINST BREACH OF CONTRACT - THE EMERGENCY PETROLEUM ALLOCATION ACT (PL 93-159) PROVIDES THAT WHERE A PERSON IS SUED FOR BREACH OF CONTRACT, HE MAY OFFER AS A DEFENSE THAT THE BREACH OCCURRED AS A RESULT OF COMPLIANCE WITH AN ORDER PURSUANT TO THE ACT.

LIMITED OFFICIAL USE  
LIMITED OFFICIAL USE

PAGE 06 STATE 052475

THE ENERGY POLICY AND CONSERVATION ACT (PL 94-163) PROVIDES THAT THE FACT THAT A BREACH OF CONTRACT WAS CAUSED PREDOMINANTLY BY ACTION TAKEN (PURSUANT TO A VOLUNTARY AGREEMENT) TO IMPLEMENT THE ALLOCATION PROVISIONS OF THE IEP SHALL BE A DEFENSE TO ANY ACTION FOR SUCH BREACH OF CONTRACT. (SEC. 252 (K)).

IN CASES OF EXPROPRIATION, OF COURSE, THE U.S. GOVERNMENT WOULD GENERALLY CONSIDER FAVORABLY ANY REQUESTS FOR

DIPLOMATIC REPRESENTATIONS WITH OTHER GOVERNMENTS INVOLVED AND COULD CONSIDER FORMAL ESPOUSAL OF THE CLAIM OF ITS NATIONAL. IN ADDITION, U.S. LEGISLATION REQUIRES UNDER CERTAIN CIRCUMSTANCES THE ELIMINATION OF U.S.

ASSISTANCE TO FOREIGN GOVERNMENTS WHICH EXPROPRIATE THE PROPERTY OF U.S. NATIONALS IN VIOLATION OF INTERNATIONAL LAW, AS WELL AS THE ELIMINATION OF CERTAIN TRADE BENEFITS.

5. " WHAT IS THE POSSIBILITY OF SHARING THE FINANCIAL BURDEN BETWEEN THE PARTICIPATING COUNTRIES IF IT WERE TO BE AGREED THAT EXTRAORDINARY COSTS SHOULD BE MET BY SOME FORM OF COMPENSATION?"

THE U.S. DELEGATION RESERVES ITS VIEW ON THE POINT UNTIL IT HAS HEARD, AND THE SEQ HAS CONSIDERED, THE VIEWS OF OTHER DELEGATIONS ON THE FIRST THREE POINTS. IN GENERAL, IT BELIEVES THAT IN THE INTEREST OF PROMOTING EFFICIENT ALLOCATION OF OIL IN AN EMERGENCY ALL PARTICIPATING COUNTRIES SHOULD CONSIDER HOW THEY MIGHT ACT JOINTLY TO AVOID SITUATIONS GIVING RISE TO EXTRAORDINARY COSTS BUT THAT FURTHER CONSIDERATION OF THE ISSUES RAISED BY THIS POINT SHOULD BE DEFERRED PENDING CONSIDERATION OF THE FIRST THREE POINTS.  
VANCE

LIMITED OFFICIAL USE

<< END OF DOCUMENT >>

## Message Attributes

**Automatic Decaptioning:** X  
**Capture Date:** 22-Sep-1999 12:00:00 am  
**Channel Indicators:** n/a  
**Current Classification:** UNCLASSIFIED  
**Concepts:** INTERAGENCY COOPERATION, PETROLEUM, POLICIES, MEETINGS, PRICE CONTROLS, BUSINESS FIRMS  
**Control Number:** n/a  
**Copy:** SINGLE  
**Sent Date:** 09-Mar-1977 12:00:00 am  
**Decaption Date:** 01-Jan-1960 12:00:00 am  
**Decaption Note:**  
**Disposition Action:** RELEASED  
**Disposition Approved on Date:**  
**Disposition Case Number:** n/a  
**Disposition Comment:** 25 YEAR REVIEW  
**Disposition Date:** 22 May 2009  
**Disposition Event:**  
**Disposition History:** n/a  
**Disposition Reason:**  
**Disposition Remarks:**  
**Document Number:** 1977STATE052475  
**Document Source:** ADS  
**Document Unique ID:** 00  
**Drafter:** EB/ORF/FSE:RMARTIN:MEP/FEA:JMORRIS  
**Enclosure:** n/a  
**Executive Order:** N/A  
**Errors:** n/a  
**Expiration:**  
**Film Number:** D770082-0551  
**Format:** TEL  
**From:** STATE  
**Handling Restrictions:** n/a  
**Image Path:**  
**ISecure:** 1  
**Legacy Key:** link1977/newtext/t197703111/baaaevkf.tel  
**Line Count:** 246  
**Litigation Code IDs:**  
**Litigation Codes:**  
**Litigation History:**  
**Locator:** TEXT ON-LINE, TEXT ON MICROFILM  
**Message ID:** 05a301b0-c288-dd11-92da-001cc4696bcc  
**Office:** ORIGIN EB  
**Original Classification:** LIMITED OFFICIAL USE  
**Original Handling Restrictions:** n/a  
**Original Previous Classification:** n/a  
**Original Previous Handling Restrictions:** n/a  
**Page Count:** 5  
**Previous Channel Indicators:**  
**Previous Classification:** LIMITED OFFICIAL USE  
**Previous Handling Restrictions:** n/a  
**Reference:** IEA/SEQ/M(76)3  
**Retention:** 0  
**Review Action:** RELEASED, APPROVED  
**Review Content Flags:**  
**Review Date:** 01-Mar-2005 12:00:00 am  
**Review Event:**  
**Review Exemptions:** n/a  
**Review Media Identifier:**  
**Review Release Date:** n/a  
**Review Release Event:** n/a  
**Review Transfer Date:**  
**Review Withdrawn Fields:** n/a  
**SAS ID:** 2964607  
**Secure:** OPEN  
**Status:** NATIVE  
**Subject:** IEA: US RESPONSE TO QUESTIONS OF THE CHAIRMAN OF THE SEQ RE EXTRAORDINARY COSTS.  
**TAGS:** ENRG, US, IEA, IAB  
**To:** OECD PARIS  
**Type:** TE  
**vdkgvwkey:** odb://SAS/SAS.dbo.SAS\_Docs/05a301b0-c288-dd11-92da-001cc4696bcc  
**Review Markings:**  
Margaret P. Grafeld  
Declassified/Released  
US Department of State  
EO Systematic Review  
22 May 2009  
**Markings:** Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009